ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 744-BC/2025

Fahad Tasavar
Versus
Syed Asad Abbas Hamdani

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	18.09.2026	Sardar Shabbir Hussain, Advocate for the petitioner. Mr. Muhammad Ahsan Fiaz, SPP Mr. Khurram Mehmood Qureshi, Advocate along with respondent No.1 Mr. Riaz Noon, S.I., P.S Karachi Company, Islamabad

Through the instant petition filed under section 497(5) of the Criminal Procedure Code, 1898 **("Cr.P.C.")**, the petitioner seeks cancellation of the pre-arrest bail granted to respondent No.1, Syed Asad Abbas Hamdani, by the learned Additional Sessions Judge-X, West-Islamabad, vide order dated 05.03.2025, in case FIR No.511/2022 dated 06.06.2022, registered under section 489-F of the Pakistan Penal Code, 1860 **("PPC")** at Police Station Karachi Company, Islamabad.

2. Learned counsel for the petitioner contends that respondent No.1 issued a cheque amounting to Rs.30,000,000/- in discharge of an outstanding liability arising from the purchase of a BMW vehicle bearing registration No. ARV-001. He submits that the cheque was dishonoured on presentation, whereupon the FIR was registered, and that all the ingredients of section 489-F of the PPC were, *prima facie*, attracted. He further argues that the learned Additional Sessions Judge failed to give due

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consideration to the admitted issuance and subsequent dishonour of the cheque, and granted respondent No.1 the extraordinary concession of pre-arrest bail even though no mala fide or ulterior motive on the part of the complainant had been established.

3. Learned counsel further submits that the application allowed by the impugned order was the third pre-arrest bail application filed by respondent No.1. His first application was dismissed as withdrawn on 21.07.2022, whereas the second application was dismissed for non-prosecution on 25.01.2024 due to his non-appearance. According to the learned counsel, respondent No.1 repeatedly invoked the jurisdiction of the court through successive pre-arrest bail applications, and the third application was not maintainable in the absence of a satisfactory explanation or any fresh ground. He maintains that the learned court below failed to appreciate properly the effect of the previous bail proceedings; therefore, the impugned order suffers from illegality, misreading and non-reading of the record and is liable to be recalled. In this regard, the learned counsel has placed reliance on ***Mukhtar Ahmad v. The State and others*** **(2016 SCMR 2064)**, ***Zafar Iqbal, Mazahar Hussain and Muhammad Saleh v. The State and others*** **(2021 SCMR 1909)** and ***Inam Ullah v. The State and others*** **(PLD 2021 SC 892).**

4. Conversely, learned counsel for respondent No.1 submits that the cheque in question was not issued in discharge of any existing liability but was furnished merely as a guarantee/security in connection with the underlying vehicle transaction. According to him, Hassan Ayub was the

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actual beneficiary of the subject BMW vehicle and had subsequently assumed responsibility for payment of the outstanding consideration. It is contended that the petitioner/complainant and Masroor Hussain accepted a Toyota Land Cruiser valued at Rs.5,000,000/- as well as cheques issued by Hassan Ayub towards the remaining consideration. It is further submitted that, pursuant to a subsequent compromise, three additional cheques aggregating Rs.25,000,000/- were accepted from Hassan Ayub, which demonstrates that the complainant's side itself treated him as the person liable for payment of the outstanding amount. One of the cheques issued by Hassan Ayub was dishonoured, whereupon FIR No.757/2022 under section 489-F of the PPC was registered against him at Police Station Industrial Area, Islamabad.

5. Learned counsel for respondent No.1 further submits that civil proceedings relating to the underlying agreement, the guarantee/security cheque and the alleged liability are pending between the parties. It is argued that the petitioner's earlier suit for declaration, cancellation, possession and permanent and mandatory injunction was dismissed on 09.07.2024, whereas the subsequent suit for recovery instituted by the petitioner on the basis of the cheque in question is pending adjudication. Respondent No.1 has also instituted a civil suit seeking, inter alia, a declaration regarding the alleged liability, cancellation of the underlying agreement and guarantee/security cheque, return of the original instruments and permanent injunction. The learned counsel argues that the determination of the person upon

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whom the liability ultimately rests, the nature of the cheque and the existence of dishonest intention require the recording and appraisal of evidence.

6. Regarding the previous bail proceedings, learned counsel for respondent No.1 submits that the first application was withdrawn on 21.07.2022 because, after respondent No.1 had joined the investigation, the Investigating Officer found that he was not involved in the alleged offence and recommended the preparation of a cancellation report through Zimni No.7. Respondent No.1 did not appear when the second application was taken up for hearing because the Investigating Officer had informed him that a cancellation report had been prepared in the case. These circumstances were specifically brought to the notice of the learned Additional Sessions Judge, who accepted the explanation and held the third application to be maintainable. Lastly, it is submitted that respondent No.1 has neither misused the concession of bail nor attempted to influence the witnesses, obstruct the proceedings or avoid the process of the Trial Court. Reliance has been placed on ***Ahmed Shakeel Bhatti and others v. The State and others*** **(2023 SCMR 1)** and ***Malik Nazir Ahmad v. Syed Shamas-ul-Abbas and another*** **(PLD 2016 SC 171)**.

7. Learned Special Public prosecutor (SPP), while supporting the petition, submits that the issuance and dishonour of the cheque are not disputed; therefore, the learned court below was not justified in extending the extraordinary concession of pre-arrest bail to respondent No.1. He has placed reliance on ***Muhammad Yasir***

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Mehmood v. Syed Sibt-e-Haider Zaidi and others **(2022 YLR 1046)**.

8. The arguments have been heard and the available record has been perused.

9. It is well settled that the considerations governing the grant of bail and those governing cancellation of bail already granted are materially different. Once the concession of bail has been granted by a court of competent jurisdiction, it ought not to be withdrawn merely because a different view of the same material is possible. Interference is ordinarily warranted where the order granting bail is patently illegal, arbitrary or perverse, or has been passed in disregard of settled principles governing the grant of bail. Cancellation may also be warranted where the accused has subsequently misused the concession by absconding, committing a similar offence, tampering with prosecution evidence, intimidating witnesses or otherwise obstructing the investigation or trial. These principles have been enunciated by the Hon'ble Supreme Court in ***Malik Nazir Ahmad v. Syed Shamas-ul-Abbas and another*** **(PLD 2016 SC 171)** and reiterated in ***Zafar Iqbal, Mazahar Hussain and Muhammad Saleh v. The State and others*** **(2021 SCMR 1909)**. Accordingly, the latter judgment, although relied upon by learned counsel for the petitioner, requires the petitioner to establish one or more exceptional circumstances warranting cancellation of bail.

10. The first question requiring consideration is whether the impugned order was passed in disregard of the principles

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governing successive pre-arrest bail applications. The record shows that the first application was dismissed as withdrawn on 21.07.2022 after respondent No.1 had joined the investigation and the Investigating Officer had found that he not involved in the alleged offence and recommended the preparation of a cancellation report. The second application was dismissed for non-prosecution on 25.01.2024. While entertaining the third application, the learned Additional Sessions Judge specifically noticed the previous proceedings in paragraph 5 of the impugned order. It was explained before the learned court that the Investigating Officer had informed respondent No.1 that a cancellation report had been prepared and, on account of that information, he did not appear when the second application was taken up for hearing. The learned court found the explanation plausible and, consequently, held the third application to be maintainable.

11. In ***Inam Ullah v. The State and others*** **(PLD 2021 SC 892)**, the Hon'ble Supreme Court did not impose an absolute prohibition upon the filing of a successive pre-arrest bail application. The principle laid down therein is that, where an earlier application has been withdrawn, the accused must furnish a satisfactory explanation for its withdrawal and for filing the subsequent application, so as to exclude any abuse of the process of the court. In the present case, the withdrawal of the first application was occasioned by a material development in the investigation, namely, the finding regarding non-involvement of respondent No.1 and the recommendation for the preparation of a cancellation report. The reason for his non-appearance in the second

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application was also placed before and accepted by the learned court below. Therefore, the impugned order cannot be said to have been passed in disregard of the principle enunciated in **Inam Ullah** (supra). The mere possibility that another court might have taken a different view of the explanation does not render the impugned order patently illegal, arbitrary or perverse so as to justify cancellation of bail already granted.

12. As to the merits, the issuance and dishonour of the cheque, by themselves, do not conclude the controversy. A material dispute exists as to whether the cheque was issued in discharge of an existing obligation or merely as a guarantee/security instrument; whether the liability originally attributed to respondent No.1 was subsequently assumed by Hassan Ayub; and what legal effect, if any, follows from the payments, the transfer or acceptance of the Toyota Land Cruiser and the subsequent cheques allegedly issued by Hassan Ayub. These questions are intertwined with the underlying agreements, payments, subsequent conduct of the parties and the connected civil proceedings and, therefore, require determination upon the recording of evidence.

13. The pendency of civil proceedings does not, by itself, bar criminal proceedings under section 489-F of the PPC. Nevertheless, the contractual background and the competing claims regarding the nature and subsistence of the obligation remain relevant at the bail stage for determining whether dishonest intention is prima facie apparent. In ***Ahmed Shakeel Bhatti and others v. The State and others***

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(2023 SCMR 1), the Hon'ble Supreme Court, while dealing with cancellation of pre-arrest bail in a case under section 489-F of the PPC held that the element of commercial dishonesty may require evidence and cannot invariably be conclusively determined at the bail stage. It was further held that an order granting bail is ordinarily liable to be cancelled only where it is perverse on its face or has been passed in patent disregard of the settled principles governing the grant of bail.

14. A perusal of the impugned order reveals that the learned Additional Sessions Judge examined the relevant material rather than granting bail mechanically. The learned court took into consideration the delay between the alleged occurrence dated 15.03.2022 and the registration of the FIR on 06.06.2022; the previous finding of the Investigating Officer regarding the non-involvement of respondent No.1 and the preparation of the cancellation report; the payments reflected in the record; the cheque amounting to Rs.25,000,000/- subsequently issued by Hassan Ayub; registration of a separate FIR against Hassan Ayub arising from the same transaction; the involvement of more than one person with distinct roles; and the disputed nature of the underlying vehicle transaction. On that basis, the learned court below found the case to be one of further inquiry. It further noticed that the alleged offence does not fall within the prohibitory clause of section 497 of the Cr.P.C., that respondent No.1 had already joined the investigation, and that no recovery was required to be effected from him.

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15. In these circumstances, the discretion exercised by the learned Additional Sessions Judge cannot be characterized as arbitrary or capricious or as based upon any material misreading or non-reading of the record. The defence raised by respondent No.1 is supported by circumstances which require deeper examination at the trial. Moreover, no subsequent material has been brought to the notice of this Court showing that respondent No.1 has misused the concession of bail, attempted to influence the witnesses, obstructed the proceedings, absconded from the process of the Court or committed any similar offence after the grant of bail.

16. The judgment in ***Inam Ullah v. The State and others*** ***(PLD 2021 SC 892)*** is distinguishable because, in that case, no satisfactory explanation had been furnished for withdrawal of the earlier application and the filing of the successive pre-arrest bail application. In the present case, however, the learned Additional Sessions Judge expressly considered the previous proceedings and accepted the explanation furnished by respondent No.1. The judgment reported as ***Mukhtar Ahmed v. The State*** ***(2016 SCMR 2064)*** concerns the general requirements governing the extraordinary concession of pre-arrest bail and does not dispense with the comparatively stricter requirements applicable to cancellation of bail already granted. Likewise, the case reported as ***Muhammad Yasir Mehmood v. Syed Sibt-e-Haider Zaidi*** (**2022 YLR 1046)** was decided on its own facts, where the bail-granting order and the material relating to the admitted obligation were found to justify

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interference. The facts of the present case, involving a disputed guarantee/security cheque, subsequent payments, the alleged assumption of liability by another person, the connected civil proceedings and a previously proposed cancellation report, are materially distinguishable from the precedents cited in support of the petition.

17. Consequently, no case for interference under section 497(5) of the Cr.P.C. is made out. The instant petition is, therefore, **dismissed.**

18. However, since the criminal proceedings have been pending for a considerable period, the learned Trial Court is directed to proceed with the trial expeditiously and **conclude** it within **three months** of receipt of a certified copy of this order. No unnecessary adjournment shall be granted to either party. Should respondent No. 1 misuse the concession of bail, avoid appearing before the learned Trial Court without sufficient cause, or attempt to delay or obstruct the trial, the petitioner shall be at liberty to file a fresh petition before this Court for cancellation of bail on the basis of such subsequent conduct.

19. The observations made herein are tentative and shall neither prejudice the case of either party nor influence the learned Trial Court while deciding the case on the basis of the evidence produced before it.

(AYYAZ SHAUKAT)
JUDGE

Saeed.

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